



BOARD OF COUNTY COMMISSIONERS

Planning and Development Department

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STAFF COMMENTS 23Z00007

Mehran Ghaeenzadeh

BU-1 (General Retail Commercial) with an existing BDP (Binding Development Plan) to BU-2 (Retail, Warehousing and Wholesale Commercial) and removal of existing BDP

Tax Account Number: 2800735

Parcel I.D.: 28-36-02-00-750

Location: South side of West New Haven (SR 192) approximately 142 feet east of Miami Avenue (District 5)

Acreage: 8.87 acres

Planning & Zoning Board: 6/12/2023

Board of County Commissioners: 7/13/2023

Consistency with Land Use Regulations

- Current zoning can be considered under the Future Land Use Designation, Section 62-1255.
- The proposal can be considered under the Future Land Use Designation, Section 62-1255.
- The proposal would maintain acceptable Levels of Service (LOS) (XIII 1.6.C)

	CURRENT	PROPOSED
Zoning	BU-1	BU-2
Potential*	386,377 sq ft commercial (using 1.0 FAR)	386,377 sq ft commercial (using 1.0 FAR)
Can be Considered under the Future Land Use Map	YES CC	YES CC

* Zoning potential for concurrency analysis purposes only, subject to applicable land development regulations.

Background and Purpose of Request

The applicant is requesting to change the zoning classification from BU-1 (General Retail Commercial) with an existing BDP to BU-2 (Retail, Warehousing and Wholesale Commercial) and removal of existing BDP on an 8.87-acre parcel to develop as a three-story storage building.

As provided in Sec. 62-1837.5 (3), the existing BU-1 zoning classification restricts structural height for self-storage mini-warehouses to the height of the lowest principal structure on any adjacent parcel. BU-2 zoning, if approved, would allow for a structural height of up to 35 feet as provided in Sec. 62-1483 (7).

The subject parcel is currently undeveloped and has approximately 640 feet of frontage on West New Haven Avenue (SR 192).

The parcel was rezoned from AU to BU-1 with a BDP on March 2, 2001, as zoning action **Z-10526**.

The existing BDP, recorded in **ORB 4296, Pages 2980 – 2982** and approved under **Z-10526** on March 2, 2001:

- requires a 100 ft. deep and 649 ft. wide landscape buffer on the southern-most portion of the property and
- excludes adult entertainment development, rentals or other offensive operations on the subject property.

As provided in Sec. 62-4916(b)(3), the establishment or operation of any adult entertainment establishment is prohibited within 1,500 feet from any area zoned for residential use within the county. The subject property is located adjacent to residential zoning and would be prohibited from developing an adult entertainment establishment.

Additionally, physical screening and buffering requirements to reduce the effects of potentially incompatible uses, including commercial uses when they abut existing residential uses, are provided in Sec. 62-4342.

Land Use

The subject property is currently designated as Community Commercial (CC) FLU. The existing BU-1 zoning can be considered consistent with the existing CC FLU designation.

The proposed BU-2 zoning can be considered consistent with the proposed Community Commercial (CC) FLU designation.

Applicable Land Use Policies

FLUE Policy 2.2 - Role of Zoning Regulations in the Designation of Commercial Lands

The zoning process regulates the types and intensities of uses for a parcel of land. Criteria which aid in assessing zoning compatibility shall include consideration of the following standards:

Criteria:

- Permitted/prohibited uses;
- Existing commercial zoning trends in the area;
- Compatibility of the proposed use with the area, pursuant to Administrative Policy 3;
- Impact upon Level of Service (LOS) standards for roads, potable water service, sanitary sewer service and solid waste disposal;
- Impact upon natural resources, including wetlands, floodplains, and endangered species; and
- Other issues which may emerge specific to a particular property which may be addressed through performance based zoning criteria.

The applicant is requesting BU-2 (Retail, Warehousing and Wholesale Commercial) zoning for future development of the parcel as a three-story storage warehouse.

The Board should evaluate the compatibility of this application within the context of Administrative Policies 2 – 8 of the Future Land Use Element.

Analysis of Administrative Policy #3 - Compatibility between this site and the existing or proposed land uses in the area.

Compatibility shall be evaluated by considering the following factors, at a minimum:

Criteria:

- A. Whether the proposed use(s) would have hours of operation, lighting, odor, noise levels, traffic, or site activity that would significantly diminish the enjoyment of, safety or quality of life in existing neighborhoods within the area which could foreseeably be affected by the proposed use;

The applicant is requesting BU-2 (Retail, Warehousing and Wholesale Commercial) zoning for future development of the parcel as a three-story storage warehouse.

The subject property abuts AU, RU-1-7, RU-1-9, and RR-1 zoning classifications. As provided in Sec. 62-1483 (7), the BU-2 zoning classification allows for a maximum height of 35 feet for parcels abutting any other land located in the GU, AGR, AU, ARR, REU, RU-1-7, RU-1-9, RU-1-11, RU-1-13, RR-1, EU, EU-1, EU-2, SEU, SR, RVP, TR-1-A, TR-1, TR-2, TR-3, TRC-1, RRMH-1, RRMH-2.5, RRMH-5, EA, PA or GML zoning classification.

Additionally, the BU-2 zoning classification allows outside storage of retail items of substantial size or items which must remain outside of a building of necessity. Such retail items include, but are not limited to, motor vehicles, utility sheds, nursery items such as plants and trees, boats and mobile homes.

Performance standards within Sections 62-2251 through 62-2272 will be reviewed at the site plan review stage should the zoning and Future Land Use change be approved.

- B. Whether the proposed use(s) would cause a material reduction (five per cent or more) in the value of existing abutting lands or approved development.

Only a certified MAI appraisal can determine if material reduction has or will occur due to the proposed request.

- C. Whether the proposed use(s) is/are consistent with an emerging or existing pattern of surrounding development as determined through an analysis of:

1. historical land use patterns;

The character of the area is commercial along West New Haven Avenue (US 192) with residential land uses in the surrounding areas. There are three (3) FLU designations within 500 feet of the subject site: CC, NC, and RES 4. The predominant FLU designation along this section of W. New Haven Avenue is CC.

2. actual development over the immediately preceding three years; and

The 12.81-acre parcel to the north of the subject property (across West New Haven) was developed as a commercial automobile dealership (20BC01643) in 2020.

3. development approved within the past three years but not yet constructed.

There has not been any development approved but not yet constructed within this area in the preceding three (3) years.

D. Whether the proposed use(s) would result in a material violation of relevant policies in any elements of the Comprehensive Plan.

No material violation of relevant policies has been identified.

Analysis of Administrative Policy #4 - Character of a neighborhood or area.

Character of a neighborhood or area shall be a factor for consideration whenever a rezoning or any application involving a specific proposed use is reviewed. The character of the area must not be materially or adversely affected by the proposed rezoning or land use application. In evaluating the character of an area, the following factors shall be considered:

Criteria:

A. The proposed use must not materially and adversely impact an established residential neighborhood by introducing types or intensity of traffic (including but not limited to volume, time of day of traffic activity, type of vehicles, etc.), parking, trip generation, commercial activity or industrial activity that is not already present within the identified boundaries of the neighborhood.

The developed character along West New Haven Avenue (US 192) is commercial. There is a mix of residential zoning classifications to the south, southeast, and southwest of the subject property, including agricultural residential (AU), rural residential (RR-1), and single-family residential (RU-1-7, RU-1-9) and zoning classifications.

The City of West Melbourne's municipal boundary is located approximately 992 feet to the west of the subject property.

Surrounding Area

	Existing Use	Zoning	Future Land Use
North	Commercial	BU-1	CC
South	Single-family Residences	AU	RES 4
East	Commercial warehousing; Single-family residence	BU-1; RU-1-7 and RR-1	CC; RES 4
West	Undeveloped commercial; Single-family Residences	BU-1 and RP; RU-1-9	CC and NC; NC

To the north is a 12.81-acre parcel with BU-1 zoning developed as commercial (car dealership) and a 0.66-acre parcel with BU-1 zoning developed as commercial (mixed commercial use).

To the south are four (4) parcels, each 2.5-acres in size with AU zoning, developed as single-family residences.

To the east is a 1.08-acre parcel with BU-1 zoning developed as warehousing. Also, east is a 1.77-acre parcel with RU-1-7 and RR-1 zoning classifications developed as a single-family residence.

To the west is an undeveloped 1.72-acre parcel with BU-1 zoning on the north portion and RP zoning on the south portion. Also, west is a 0.26-acre parcel with RU-1-9 zoning developed as a single-family residence.

The current BU-1 classification encompasses land devoted to general retail shopping, offices and personal services to serve the needs of the community and allows for retail commercial land uses on minimum 7,500 square foot lots. The BU-1 classification does not permit warehousing or wholesaling.

The proposed BU-2 classification permits retail, wholesale and warehousing commercial land uses on minimum 7,500 square foot lots. Possible incompatibilities are due to the intensive nature of commercial activities permitted by the BU-2 classification and possible noise, light, traffic and other nuisance factors potentially associated with BU-2 activities.

The RU-1-7 classification permits single family residences on minimum 5,000 square foot lots with minimum widths of 50 feet and depth of 100 feet. The minimum house size is 700 square feet.

The RU-1-9 classification permits single family residential development on lots of 6,600 square feet (minimum). The minimum house size is 900 square feet.

The RR-1 classification permits single-family residential land uses on a minimum one acre lot, with a minimum lot width and depth of 125 feet. The RR-1 classification permits horses, barns and horticulture as accessory uses to a single-family residence. The minimum house size is 1,200 square

feet. Keeping of horses and agricultural uses are accessory to a principal residence within the RR-1 zoning district.

The AU zoning classification permits single-family residences and agricultural uses on 2.5 acre lots, with a minimum lot width and depth of 150 feet. The minimum house size in AU is 750 square feet. The AU classification also permits the raising/grazing of animals and plants nurseries.

TR-1 is a single family residential mobile home zoning classification which permits mobile homes or residences of standard construction on lots of 7,500 square feet (minimum) with lot width of 65 feet and lot depth of 100 feet.

The SR classification permits single family residences on minimum half acre lots, with a minimum width of 100 feet and a depth of 150 feet. The minimum house size in SR is 1,300 square feet.

Three zoning actions have been approved within a half-mile radius of the subject property within the last three years: 22Z00044, approved by the Board on November 3, 2022, was a request to change RU-1-7 (Single-family Residential) to RU-1-11 (Single-family Residential) on 1.76 acres located approximately 2,490 feet southeast of the subject property. 22Z00011, approved by the Board on May 26, 2022, was a request to change RU-1-7 (Single-family Residential) to SR (Suburban Residential) on 0.69 acres located approximately 830 feet southwest of the subject property. 21Z00040, approved by the Board on February 3, 2022, was a request to change BU-1 (General Retail Commercial) and BU-2 (Retail, Warehousing, and Wholesale Commercial) to all BU-2 (Retail, Warehousing, and Wholesale Commercial) on 2.11 acres located approximately 496 feet northeast of the subject property.

A request to change RU-1-7 (Single-Family Residential) and BU-1 (General Retail Commercial) with a BDP to RU-2-15 (Medium-Density Multi-Family Residential) and removal of BDP on 12.59 acres located 1,375 feet west of the subject site on W. New Haven Avenue (**22Z00052**) was withdrawn by the applicant on January 24, 2023. A companion land use change application (**22SS00012**) requesting to amend the Future Land Use designation from Community Commercial (CC) and Residential 4 (RES 4) to Residential 15 (RES 15) on that property was also withdrawn by the applicant.

There are no pending zoning actions within a half-mile radius of the subject property.

Preliminary Concurrency

The closest concurrency management segment to the subject property is US 192 from John Rodes Boulevard to Wickham Road, which has a Maximum Acceptable Volume (MAV) of 39,800 trips per day, a Level of Service (LOS) of D, and currently operates at 76.36% of capacity daily. The maximum development potential from the proposed rezoning increases the percentage of MAV utilization by 1.28%. The corridor is anticipated to operate at 77.63% of capacity daily. The development potential of the proposal is not anticipated to create a deficiency in LOS. Specific concurrency issues will be address at the time of site plan review. This is only a preliminary review and is subject to change.

No school concurrency information has been provided as the development proposal is for commercial and not residential use.

The parcel is within the City of Melbourne's service area for public water. The closest sanitary sewer line (City of West Melbourne) is located on the north side of US 192.

Environmental Constraints

- Wetlands/Hydric Soils
- Aquifer Recharge Soils
- Indian River Lagoon Nitrogen Reduction Septic Overlay
- Protected and Specimen Trees
- Protected Species

Please refer to all comments provided by the Natural Resource Management Department at the end of this report.

For Board Consideration

The Board may wish to consider if the request is consistent and compatible with the surrounding area. The Board may also wish to consider the removal of the existing BDP.

NATURAL RESOURCES MANAGEMENT (NRM) DEPARTMENT
Zoning Review & Summary
Item #23ZS00007

Applicant: Mehran Ghaeenzadeh

Land Use Request: BU-1 w/BDP to BU-2, remove BDP

Note: Site no longer suited for General Retail Commercial. Applicant proposes three-story building.

P&Z Hearing Date: 04/17/23; **BCC Hearing Date:** 05/04/202

Tax ID No: 2800735

- This is a preliminary review based on best available data maps reviewed by the Natural Resources Management Department (NRM) and does not include a site inspection to verify the accuracy of the mapped information.
- In that the rezoning process is not the appropriate venue for site plan review, specific site designs submitted with the rezoning request will be deemed conceptual. Board comments relative to specific site design do not provide vested rights or waivers from Federal, State or County regulations.
- **This review does not guarantee whether or not the proposed use, specific site design, or development of the property can be permitted under current Federal, State, or County Regulations.**

Summary of Mapped Resources and Noteworthy Land Use Issues:

- Wetlands/Hydric Soils
- Aquifer Recharge Soils
- Indian River Lagoon Nitrogen Reduction Septic Overlay
- Protected and Specimen Trees
- Protected Species

Wetlands/Hydric Soils

An Environmental Assessment prepared by Atlantic Environmental of Florida, LLC in January 2023, delineated an 0.99-acre wetland on site. The wetland assessment and delineation shall be verified at time of site plan submittal. Section 62-3694(c)(3)b has allowances for wetland impacts for commercial land development activities along Mitigation Qualified Roadways (MQRs). New Haven Avenue is an MQR in this location. Prior to the allowance of any wetland impacts, the applicant shall complete High Function and Landscape Level wetlands assessments. Approval by the Brevard County Board of County Commissioners may be required for impacts. Any permitted wetland impacts must meet the requirements of Section 62-3694(e) including avoidance of impacts, and will require mitigation in accordance with Section 62-3696. The applicant is encouraged to contact NRM at (321) 633-2016 prior to any site plan design or permit submittal.

Protected and Specimen Trees

Protected (>= 10 inches in diameter) and Specimen (>= 24 inches in diameter) trees likely exist on the parcel. A tree survey will be required at time of a site plan submittal. The applicant is encouraged to perform a tree survey prior to any site plan design in order to incorporate valuable vegetative communities or robust trees into the design. Per Section 62-4341(18), Specimen and Protected Trees shall be preserved or relocated on site to the Greatest Extent Feasible. Greatest Extent

Feasible shall include, but not be limited to, relocation of roads, buildings, ponds, increasing building height to reduce building footprint or reducing Vehicular Use Areas. The applicant is advised to refer to Article XIII, Division 2, entitled Land Clearing, Landscaping, and Tree Protection, for specific requirements for preservation and canopy coverage requirements. Applicant should contact NRM at 321-633-2016 prior to performing any land clearing activities.

Land Use Comments:

Wetlands/Hydric Soils

A majority of the site contains mapped hydric soils (Basinger sand), as shown on the USDA Soil Conservation Service Soils Survey map. An Environmental Assessment prepared by Atlantic Environmental of Florida, LLC in January 2023, delineated an 0.99-acre wetland on site. The wetland assessment and delineation shall be verified at time of site plan submittal. Section 62-3694(c)(3)b has allowances for wetland impacts for commercial land development activities along Mitigation Qualified Roadways (MQRs). New Haven Avenue is an MQR in this location. Prior to the allowance of any wetland impacts, the applicant shall complete High Function and Landscape Level wetlands assessments. Approval by the Brevard County Board of County Commissioners may be required for impacts. Any permitted wetland impacts must meet the requirements of Section 62-3694(e) including avoidance of impacts, and will require mitigation in accordance with Section 62-3696. The applicant is encouraged to contact NRM at (321) 633-2016 prior to any site plan design or permit submittal.

Aquifer Recharge Soils

Basinger sand can also function as an aquifer recharge soil. Mapped topographic elevations indicate the soils may consist of Type 3 Aquifer Recharge soils that have impervious area restrictions. The applicant is hereby notified of the development and impervious restrictions within Conservation Element Policy 10.2 and the Aquifer Protection Ordinance

Indian River Lagoon Nitrogen Reduction Septic Overlay

The east edge of the parcel is mapped within the Indian River Lagoon Nitrogen Reduction Overlay. If adequate sewer for the development is not available, then the use of an alternative septic system, designed to provide at least 65% total nitrogen reduction through multi-stage treatment processes, shall be required.

Protected and Specimen Trees

Protected (≥ 10 inches in diameter) and Specimen (≥ 24 inches in diameter) trees likely exist on the parcel. A tree survey will be required at time of a site plan submittal. The applicant is encouraged to perform a tree survey prior to any site plan design in order to incorporate valuable vegetative communities or robust trees into the design. Per Section 62-4341(18), Specimen and Protected Trees shall be preserved or relocated on site to the Greatest Extent Feasible. Greatest Extent Feasible shall include, but not be limited to, relocation of roads, buildings, ponds, increasing building height to reduce building footprint or reducing Vehicular Use Areas. The applicant is advised to refer to Article XIII, Division 2, entitled Land Clearing, Landscaping, and Tree Protection, for specific requirements for preservation and canopy coverage requirements. Applicant should contact NRM at 321-633-2016 prior to performing any land clearing activities.

Protected Species

Information available to NRM indicates that federally and/or state protected species may be utilize the property. The Environmental Assessment report documented the potential for Gopher Tortoises. Prior to any plan, permit submittal, or development activity, including land clearing, the applicant should obtain any necessary permits or clearance letters from the Florida Fish and Wildlife Conservation Commission and/or U.S. Fish and Wildlife Service, as applicable.